

TEXT OF PROPOSED RULE

SECTION 1. Chapter PSC 128 is created to read:

CHAPTER PSC 128**WIND ENERGY SYSTEMS****Subchapter I General****Subchapter II Developer Requirements****Subchapter III Political Subdivision Procedure****Subchapter IV Commission Procedure****Subchapter I****General**

PSC 128.01 Definitions. In this chapter:

(1) “Commission” means the public service commission.

(2) “Developer” means a person involved in acquiring the necessary rights, permits and approvals, and otherwise planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system. “Developer” includes, prior to completion of construction of a wind energy system, an owner and an operator.

(3) “Decommissioning” means removal of all of the following:

(a) The above ground portion of a wind energy system, including wind turbines and related facilities, except for access roads if removal has been waived by the property owner.

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(b) All below ground facilities, except for underground collector circuit facilities, and concrete structures four feet or more below grade.

(4) “DNR” means the Wisconsin department of natural resources.

(5) “Large wind energy system” means a wind energy system with an installed nameplate capacity of greater than 100 kilowatts.

(6) “Maximum blade tip height” means the nominal hub height plus the nominal blade length, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, “maximum blade tip height” means the actual hub height plus the blade length.

(7) “Nameplate capacity” means the nominal generating capacity, as listed in the wind turbine specifications provided by the wind turbine manufacturer.

(8) “Nonparticipating property” means real property for which there is no agreement between the landowner and developer that permits the construction of any part of a wind energy system on the property.

(9) “Nonparticipating residence” means an occupied permanent residence located on a nonparticipating property.

(10) “Occupied community building” means a school, church, daycare facility or public library.

(11) “Operator” means the person responsible for the operation and maintenance of a wind energy system.

(12) “Owner” means a person with an ownership interest in a wind energy system.

(13) “Participating property” means any of the following:

(a) Real property which is subject to an agreement between the landowner and the developer, owner, or operator for the construction of any portion of a wind energy system on the property.

(b) Real property that is the subject of an agreement that includes all of the following terms:

1. Provides for the payment of monetary compensation to the landowner from the developer, owner or operator regardless of whether any part of a wind energy system is constructed on the property.

2. Specifies in writing that the landowner's acceptance of payment establishes the landowner's property as a participating property.

(14) "Political subdivision" has the meaning given in s. 66.0401 (1e) (c), Stats.

(15) "Residence" includes a permanent occupied personal residence, hospital, community-based residential facility, residential care apartment complex or similar facility, and nursing home.

(16) "Regulation" includes any ordinance or resolution adopted by the governing body of a political subdivision relating to a wind energy system and any contract or agreement entered into by a political subdivision and a developer relating to a wind energy system.

(17) "Shadow flicker" means a pattern of changes in light intensity resulting from the shadow of rotating wind turbine blades being cast on a residence or an occupied community building.

(18) "Small wind energy system" means a wind energy system that has an installed nameplate capacity of 100 kilowatts or less.

(19) "Turbine host property" means real property which is subject to an agreement between a landowner and a developer, owner, or operator for the construction of one or more wind turbines.

(20) "Wind easement" means a written document that creates a legal interest in real property that permits a developer or owner to place and construct a wind turbine or associated facilities on the property.

(21) "Wind energy system" has the meaning given in s. 66.0403 (1) (m), Stats.

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(22) “Wind lease” means a written agreement between a landowner and a developer, owner or operator that establishes terms and conditions associated with the placement or construction of a wind turbine or associated facilities on a landowner’s property.

PSC 128.02 Applicability. (1) (a) Except as provided in par. (b), this chapter applies to wind energy systems.

(b) This chapter does not apply to any of the following:

1. A wind energy system for which a certificate of public convenience and necessity application has been filed with the commission before the effective date of this chapter...[LRB inserts date].

2. A wind energy system for which construction began before the effective date of this chapter ...[LRB inserts date].

3. A wind energy system placed in operation before the effective date of this chapter ... [LRB inserts date].

4. A wind energy system approved by a political subdivision before the effective date of this chapter ... [LRB inserts date].

5. A wind energy system proposed by a developer in an application filed before the effective date of the chapter ... [LRB inserts date] with a political subdivision that has an established procedure for review of applications for wind energy systems.

(c) If a developer intends to submit an application for the installation or use of a wind turbine with a maximum blade tip height exceeding 500 feet or for a wind energy system proposed to be located in Lake Michigan or Lake Superior, the developer shall file a petition with the commission for the commission to promulgate rules for the use and installation of such wind energy systems.

(2) Nothing in this chapter shall preclude the commission from giving individual consideration to exceptional or unusual situations and applying requirements to an individual wind energy system that may be lesser, greater, or different from those provided in this chapter.

Subchapter II

Developer Requirements

PSC 128.10 Development of a wind energy system; Notice requirements. (1) GENERAL

NOTIFICATION REQUIREMENTS. (a) At least 270 days before a developer files an application to construct a wind energy system, or 180 days before the planned start of construction of a wind energy system, whichever is earlier, a developer shall provide written notice of the planned wind energy system to landowners within one mile of the planned wind energy system and to all political subdivisions within which the wind energy system may be located. For a large wind energy system, a developer shall file a copy of the notice with the commission.

(b) The developer shall include all of the following in the notice under par. (a):

1. A complete description of the wind energy system, including the number and size of the wind turbines.
2. A map showing the planned location of the wind energy system.
3. Contact information for the developer.
4. A list of all potential permits or approvals the developer anticipates may be necessary for construction of the wind energy system.

5. Whether the developer is requesting a joint application review process under s. PSC 128.30(7) and the names of any other political subdivision that may participate in the joint review process.

(2) DNR NOTIFICATION. (a) At least 90 days before a developer files an application to construct a wind energy system, or 120 days before the start of construction if no application process is required by the political subdivision, the developer shall notify the DNR of the proposed wind energy system and the proposed location of all wind energy system facilities. A developer shall consult with the DNR and incorporate into wind energy system siting decisions required permitting considerations for wetlands, waterways, construction site erosion control, and threatened or endangered resources.

(3) TRANSPORTATION NOTIFICATIONS. (a) At least 90 days before a developer files an application to construct a wind energy system, or 120 days before the start of construction if no application process is required by the political subdivision, the developer shall notify the Wisconsin Department of Transportation of the proposed wind energy system and the proposed location of all wind energy system facilities. The developer shall also notify the highway department of any political subdivision within which the wind energy system may be located.

(b) For a large wind energy system, a developer shall prepare a transportation plan, in consultation with the Department of Transportation and affected political subdivisions, that minimizes impacts to existing traffic patterns, adheres to established road weight limits and provides for mitigating, assessing and repairing, at the developer, owner or operator's expense, road damage caused by construction and operation of the wind energy system.

(5) EMERGENCY SERVICE NOTIFICATIONS. (a) At least 90 days before a developer files an application to construct a wind energy system, or 120 days before the start of construction if

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no application process is required by the political subdivision, the developer shall notify all of the following of the proposed wind energy system:

1. Emergency first responders including fire, police, ambulance and air ambulance services serving the proposed wind energy system location.

2. Emergency first responders of a political subdivision within which the wind energy system may be located.

(b) For a large wind energy system, the developer shall consult and coordinate with local first responders and air ambulance services regarding the development of an emergency evacuation plan, including the locations of alternate landing zones for emergency services aircraft. The developer shall file the final plan with the political subdivision, using confidential filing procedures if necessary.

PSC 128.11 Real property provisions. (1) WIND EASEMENT. (a) A property owner may grant another person a wind easement in the same manner and with the same effect as a conveyance of an interest in real property. A wind easement shall be in writing and shall be filed with the register of deeds for the county in which the property is located.

(b) A wind easement shall include a legal description of the property subject to the wind easement.

(2) WIND LEASE REQUIREMENTS. A wind lease shall include provisions that require all of the following:

(a) Require the developer, owner and operator of the wind energy system to comply with all federal, state and local laws and regulations applicable to the wind energy system.

(b) Permit the property owner to terminate the wind lease if the portion of the wind energy system located on the property has not operated for a period of at least 18 months unless the property owner receives the normal minimum payments that would have occurred if the wind energy system had been operating during that time. In this paragraph, “normal minimum payments” means the minimum payments as provided in the wind lease, or if not provided for in the wind lease, payments at least equal to the periodic payments received by the property owner in the last full calendar year that the wind energy system was in full operation.

(c) Specify the circumstances under which the developer, owner or operator of the wind energy system may withhold payments from the property owner.

(d) Permit the property owner to rescind an executed wind lease within 3 business days of signing the wind lease.

(3) WIND LEASE PROHIBITIONS. A wind lease may not include provisions that require any of the following:

(a) Require the parties to maintain the confidentiality of any terms of a proposed wind lease except that the parties may include a confidentiality agreement regarding the compensation terms contained in the final signed wind lease.

(b) Make the property owner liable for any property tax associated with the wind energy system or other equipment related to the production of electricity by the wind energy system.

(c) Make the property owner liable for any violation of federal, state or local laws and regulations by the developer, owner or operator of the wind energy system.

(d) Make the property owner liable for any damages caused by the wind energy system or the operation of the wind energy system, including liability or damage to the property owner or to third parties.

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(4) MITIGATION AGREEMENTS. A developer, owner or operator may not, as a condition of accepting any benefit to settle a noise, signal interference, stray voltage or shadow flicker mitigation issue, require a property owner to keep the settlement confidential or require the property owner to waive any right to make a future claim about an unrelated issue.

PSC 128.12 Existing property uses. A developer shall make reasonable efforts to ascertain and accommodate existing land uses and commercial enterprises located on nonparticipating properties within one mile of a proposed wind turbine site.

PSC 128.13 Siting criteria. (1) DISTANCE AND HEIGHT REQUIREMENTS. (a) A developer shall design and construct a wind energy system using the wind turbine setbacks shown in Table 1.

Table 1	
Setback Description	Setback Distance
Occupied Community Buildings	3.1 times the maximum blade tip height
Participating Residences	1.5 times the maximum blade tip height
Nonparticipating Residences	3.1 times the maximum blade tip height
Participating Property Lines	None
Nonparticipating Property Lines	1.1 times the maximum blade tip height
Public Road Right-of-Way	1.1 times the maximum blade tip height
Wetlands; Ordinary High Water Mark of Lakes and Waterways	1.1 times the maximum blade tip height
Overhead Communication and Electric Transmission or Distribution Lines - Not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height
Overhead Utility Service Lines - Lines to individual houses or outbuildings	None

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(b) Wind turbine setback distances shall be measured as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent foundation of a building or residence or to the nearest point on the property line or feature, as applicable.

(c) A developer shall work with a political subdivision to site wind turbines to minimize individual hardships.

(d) The owner of a participating residence, occupied community building or nonparticipating residence may waive the wind turbine setbacks in Table 1 for those structures, except that the setback for a large wind energy system may not be less than 1.5 times the maximum blade tip height, and the setback for a small wind energy system may not be less than 1.1 times the maximum blade tip height.

(2) POLITICAL SUBDIVISION CRITERIA. (a) A political subdivision may not establish distance or height requirements different than those in this chapter.

(b) A political subdivision may not set height or distance limitations for a wind turbine near a public use airport or heliport that are more restrictive than existing airport and airport approach protection provisions under ss. 114.135 and 114.136, Stats. If no provisions have been established for public use airports or heliports under ss. 114.135 or 114.136, Stats., the political subdivision may adopt wind turbine height or distance provisions that are based on, but not more restrictive than, the federal aviation administration obstruction standards in CFR title 14, part 77.

(c) A political subdivision may not set height or distance limitations for wind turbines near a private medical facility heliport used for air ambulance service that are more restrictive than federal aviation administration obstruction standards that apply to public use heliports.

(d) A political subdivision may not set height or distance limitations for a wind turbine near a private use airport.

(e) A political subdivision may not establish long-term land use planning requirements or practices that preclude the construction of a wind turbine or a wind energy system within the political subdivision's jurisdiction.

(3) LINE-OF-SIGHT COMMUNICATION TECHNOLOGIES STANDARD. The developer, owner or operator may not construct wind energy system facilities within the path of existing line-of-sight communication technologies. A political subdivision may require a developer to provide information showing that wind turbines and other wind energy system facilities will not be placed within the path of existing line-of-sight technologies.

PSC 128.14 Noise Criteria. (1) PLANNING. A developer shall comply with the noise standards in this section when making wind turbine siting decisions.

(2) NOISE STANDARD. (a) Compliance with noise limits shall be measured or otherwise evaluated at the outside wall of the nonparticipating residence or occupied community building. If sound level measurements are used to evaluate compliance, those measurements shall be made at the outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the resident. The developer may take additional measurements to evaluate compliance in addition to those specified by this section.

(b) Except as provided in sub. (3)(a) and (d), a developer shall operate the wind energy system in a manner that does not exceed 50 dBA at any nonparticipating residence or occupied community building existing on the date of approval of the wind energy system by the political subdivision.

(3) MITIGATION. (a) A developer, owner or operator shall test for compliance with the noise limits upon complaint by a nonparticipating resident. If the complaint relates to noise during nighttime hours, the noise limit for those areas related to the complaint shall be reduced to 45

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1 dBA during nighttime hours and the developer, owner or operator shall ensure the seasonally-
2 reduced nighttime noise limit is met. For purposes of this paragraph, nighttime hours are the
3 hours between 10:00 p.m. to 6:00 a.m. daily, from April 1 to September 30.

4 (b) Methods available for the developer, owner or operator to comply with noise limits shall
5 include operational curtailment of a wind turbine.

6 (c) A developer shall provide notification of the requirements of this section to potentially-
7 affected owners of nonparticipating residences and occupied community buildings before the
8 initial operation of the wind energy system.

9 (d) In the event audible noise due to wind energy system operations contains a steady pure tone,
10 such as a whine, whistle, screech, or hum, the developer, owner or operator shall promptly take
11 corrective action to eliminate the cause of the steady pure tone. Operational curtailment of a
12 wind turbine during nighttime hours may be used to comply with this paragraph until the cause
13 of the steady pure tone can be permanently eliminated. This paragraph does not apply to
14 rhythmic sound that may be generated by the rotation of wind turbine blades.

15 (e) A developer shall evaluate compliance with the noise limits as part of pre- and post-
16 construction noise studies. A developer, owner or operator shall conduct pre- and post-
17 construction noise studies as described in the most current version of the noise measurement
18 protocol.

19 (f) The commission shall establish a noise measurement protocol, which shall contain minimum
20 requirements for pre- and post-construction noise studies. The commission may revise the noise
21 measurement protocol as necessary. The commission shall make the noise measurement
22 protocol available to the public on the commission's website.

(g) An owner of an affected residence may relieve the developer of the requirement to meet any of the noise requirements in this section at the affected residence by written contract with the developer. Unless otherwise provided in a contract signed by an owner of an affected residence, a waiver by an owner of an affected residence is an encumbrance on the real property and runs with the land until the wind energy system is decommissioned.

PSC 128.15 Shadow flicker. (1) PLANNING. A developer shall consider shadow flicker in wind turbine siting decisions. A developer shall plan the proposed wind energy system in a manner that minimizes shadow flicker at an occupied community building or participating or nonparticipating residence to the extent reasonably practicable. A developer shall use shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by a large wind energy system.

(2) STANDARD. The developer shall design a wind energy system so that computer modeling indicates that no nonparticipating residence would experience more than 30 hours per year of shadow flicker.

(3) MITIGATION. (a) A developer, owner and operator shall work with an owner of a residence to mitigate the effects of shadow flicker. The developer shall provide shadow flicker mitigation for a residence experiencing 25 hours per year or more of shadow flicker. The developer shall model shadow flicker and a residence is eligible for mitigation if computer modeling shows that shadow flicker exceeds 25 hours per year at the residence. The owner of the residence is not required to document the actual hours per year of shadow flicker if modeling indicates the residence is eligible for mitigation. A residence that exceeds 25 hours per year of shadow flicker based on records kept by the resident shall also be eligible for mitigation.

(b) A developer, owner or operator may provide shadow flicker mitigation for residences experiencing less than 25 hours per year of shadow flicker.

(c) The requirement under par. (a) to mitigate shadow flicker at an eligible residence is triggered when the developer, owner or operator receives a complaint regarding shadow flicker. If shadow flicker mitigation is required, the developer, owner or operator shall allow the owner of the residence to choose a preferred reasonable mitigation technique, including installation of blinds or plantings at the developer, owner or operator's expense.

(d) A developer, owner or operator shall provide notification to the owners of potentially-affected residences of the provisions of this section before initial operation of the wind energy system.

(e) An owner of an affected residence may by written contract waive the developer, owner or operator's requirement to provide shadow flicker mitigation. A waiver by an owner of an affected residence is an encumbrance on the real property and runs with the land until the wind energy system is decommissioned.

PSC 128.16 Signal interference. (1) PLANNING. A developer shall consider radio, television and cellular telephone signal interference in wind turbine siting decisions and shall use reasonable efforts to avoid causing such interference to the extent practicable. A political subdivision may establish reasonable standards regarding radio, television, cellular telephone interference.

(2) RADIO AND TELEVISION INTERFERENCE MITIGATION. A developer, owner or operator shall use reasonable efforts to mitigate radio and television signal interference to the extent practicable. Before implementing remedial measures, the developer, owner or operator

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1 shall consult with affected residents regarding the preferred reasonable mitigation solutions for
2 radio and television interference problems. A developer, owner or operator shall mitigate radio
3 and television interference by making a resident's preferred reasonable mitigation solution
4 permanent.

5 **(3) CELLULAR TELEPHONE INTERFERENCE MITIGATION.** A developer, owner or
6 operator shall use reasonable efforts to mitigate cellular telephone signal interference to the
7 extent practicable. The developer, owner or operator shall work with affected cellular providers
8 to provide adequate coverage in the affected area. Acceptable mitigation techniques for lost or
9 weakened cellular telephone communications include installing an additional micro cell, cell, or
10 base station facility to fill in the affected area. The micro cell, cell, or base station may be
11 installed on a structure within the wind energy system.

12
13 **PSC 128.17 Stray voltage.** (1) **STRAY VOLTAGE TESTING REQUIRED.** Developer,
14 owner, or operator shall work with the local electric distribution companies to test for stray
15 voltage at all dairy and confined animal operations within one-half mile of any wind energy
16 system facility, before any construction that may interfere with testing commences and again
17 after construction of the wind energy system is completed. Before any testing, a developer,
18 owner or operator shall work with commission staff to determine the manner in which stray
19 voltage measurements will be conducted and on which properties.

20 **(2) RESULTS OF TESTING.** A developer, owner, or operator shall provide to commission
21 staff the results of stray voltage testing.

(3) REQUIREMENT TO RECTIFY PROBLEMS. Developer, owner or operator shall work with the electric distribution utilities and farm owners to rectify any stray voltage problems arising from the construction and operation of the wind energy system.

PSC 128.18 Construction and operation. (1) PHYSICAL CHARACTERISTICS. (a)

A developer, owner or operator may not display advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine. A developer, owner or operator may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. A developer, owner or operator may attach a safety feature or wind monitoring device to a wind turbine.

(b) A developer, owner or operator shall ensure that a wind turbine has a neutral finish.

(c) A developer, owner or operator shall install lighting that complies with standards established by the federal aviation administration.

(d) A developer, owner or operator of a wind turbine shall ensure that a wind turbine is not climbable except by authorized personnel.

(e) An owner or operator of a wind energy system shall ensure that all access doors to the wind turbines and electrical equipment are locked when authorized personnel are not present.

(f) A developer, owner or operator of a wind energy system shall place appropriate warning signage on or at the base of each wind turbine.

(g) An owner or operator of a wind energy system shall post and maintain up-to-date signs containing a twenty-four hour emergency contact telephone number, information identifying the owner or operator, and sufficient information to identify the location of the sign within the wind

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energy system. An owner or operator shall post these signs at every intersection of a wind energy system access road with a public road.

(2) ELECTRICAL STANDARDS. (a) A developer, owner or operator shall construct, maintain, and operate collector circuit facilities in a manner that complies with the national electrical safety code and Wis. Admin. Code ch. PSC 114 and shall construct, maintain, and operate all wind energy system facilities in a manner that complies with the national electrical code.

(b) A developer shall construct collector circuit facilities underground to the extent practicable.

(c) A developer, owner or operator shall establish an inspection schedule for all overhead collector circuits to ensure that third-party facilities such as cable television and telecommunications cables are not attached and bonded to overhead collector circuit grounding.

If third-party facilities are found attached to the overhead collector facilities, developer shall ensure that the third-party facilities are promptly removed.

(3) CONSTRUCTION, OPERATION, AND MAINTENANCE STANDARDS. (a) A developer, owner or operator shall construct, operate, repair, maintain and replace wind energy system facilities as needed to keep the wind energy system in good repair and operating condition.

(b) Except for the area occupied by the wind energy system and related facilities, including permanent access roads, a developer shall restore the topography, soils and vegetation of the project area to original condition after construction is complete.

(c) A developer, owner or operator of a wind energy system shall carry general liability insurance relating to claims for property damage or bodily injury arising from the construction or operation of the wind energy system and shall include turbine host property owners as additional insured persons on the policy.

1 **(4) EMERGENCY PROCEDURES.** (a) In this subsection, “wind energy system emergency”

2 means a condition or situation at a wind energy system that presents a significant threat of

3 physical danger to human life or a significant threat to property. “Wind energy system

4 emergency” includes natural events that cause damage to wind energy system facilities.

5 (b) An owner or operator shall notify a political subdivision within 24 hours of a wind energy

6 system emergency and the nature of the wind energy system emergency.

7 (c) An owner or operator shall establish and maintain liaison with a political subdivision and

8 with fire, police, and other appropriate first responders serving within one-half mile of the wind

9 energy system to do all of the following:

10 1. Learn the responsibility and resources of each government organization or first responder

11 entity that would respond to a wind energy system emergency.

12 2. Acquaint the political subdivision and fire, police and other appropriate first responders

13 serving within one-half mile of the wind energy system with the owner and operator’s abilities to

14 respond to a wind energy system emergency and provide annual training for appropriate officials

15 regarding responding to a wind energy system emergency until the wind energy system has been

16 decommissioned.

17 3. Identify the types of wind energy system emergencies subject to notification under par. (b).

18 4. Plan how the owner or operator and fire, police, and other first responders can engage in

19 mutual assistance to minimize hazards to life and property.

20 (d) An owner or operator of a large wind energy system shall establish written procedures that

21 provide for shutting down the wind energy system or a portion of the system, as appropriate, in

22 the event of wind energy system emergency. The procedures shall provide for all of the

23 following:

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- 1 1. Establishing and maintaining adequate means of communication with a political subdivision
- 2 and with fire, police, and other appropriate first responders.
- 3 2. Advising an affected political subdivision of a wind energy system emergency.
- 4 3. Prompt and effective response to a notice of any of the following types of emergencies:
- 5 a. Mechanical failure of wind turbine facilities.
- 6 b. Fire associated with a wind turbine or associated facilities.
- 7 c. Emergency situations requiring the evacuation of a person or persons from the wind energy
- 8 system.
- 9 d. Natural disaster.
- 10 e. Police actions, such as a request or order by police or fire officials to interrupt operation of any
- 11 wind energy system facility due to an emergency.
- 12 4. Actions directed toward protecting people first and then property.
- 13 5. Making safe any actual or potential hazard to people or property.
- 14 6. Notifying a political subdivision and fire, police, and other appropriate first responders of a
- 15 wind energy system emergency and coordinating with planned and actual responses during an
- 16 emergency.
- 17 (e) An owner or operator of a large wind energy system shall do all of the following:
- 18 1. Furnish its supervisors and employees who are responsible for emergency action a copy of the
- 19 latest edition of the emergency procedures established under par. (d) to ensure compliance with
- 20 those procedures.
- 21 2. Train the appropriate operating personnel to ensure they have knowledge of the emergency
- 22 procedures and verify that the training is effective.

3. As soon as possible after the end of a wind energy system emergency, the owner, or operator shall review employee activities to determine whether the procedures were effectively followed.

(5) COMPLAINT PROCESS. (a) Before construction of a wind energy system begins, a developer shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within one-half mile of the wind energy system. A developer shall include a contact person and telephone number for complaints or concerns during construction, operation, maintenance and decommissioning. A developer shall provide a copy of the notice to any political subdivision within which the wind energy system will be located, and the developer, owner or operator shall keep the contact person and telephone number up-to-date and on file with the political subdivision.

(b) A developer, owner or operator shall maintain a log of all complaints received regarding the wind energy system. The log shall include the name and address of the complainant, the nature of the complaint, and the steps taken to resolve the complaint. A developer, owner or operator shall make copies of this complaint log available, at no cost, to any monitoring committee established under s. PSC 128.36 by a political subdivision in which the wind energy system is located. If a monitoring committee has not been established, the developer, owner or operator shall make a complaint log available to the political subdivision upon request.

(c) A developer, owner or operator shall make a complaint log available to the commission upon request.

PSC 128.19 Decommissioning. (1) REQUIREMENT TO DECOMMISSION. (a) Except as provided in par. (e), the owner or operator of a wind energy system shall decommission and remove a wind energy system when the system is at the end of its useful life.

(b) A developer shall include in an application to construct a wind energy system a decommissioning and site restoration plan that provides reasonable assurances that the developer, owner or operator will be able to comply with this section.

(c) A wind energy system is presumed to be at the end of its useful life if the wind energy system generates no electricity for a continuous 6 month period. This presumption may be rebutted by the owner or operator by submitting to the political subdivision a plan outlining the steps and schedule for returning the wind energy system to service within 6 months after the date the wind energy system is presumed to be at the end of its useful life. Upon application by the owner or operator, a political subdivision shall grant an extension of the time period for returning the wind energy system to service by an additional 6 month period if the owner or operator demonstrates an ongoing good faith effort to return the wind energy system to service. A wind energy system that generates no electricity for a continuous 18 month period is irrebuttably presumed to be at the end of its useful life.

(d) When decommissioning is required, the owner or operator shall begin decommissioning within 9 months after the wind energy system has reached the end of its useful life. The owner or operator shall complete decommissioning and removal of the wind energy system within 18 months after the wind energy system has reached the end of its useful life.

(e) A political subdivision may grant a temporary deferral of the requirement to decommission and remove a wind energy system if it is likely the wind energy system will operate again in the future and if any of the following apply:

1. The wind energy system is part of a prototype or other demonstration project being used for ongoing research or development purposes.
2. The wind energy system is being used for educational purposes.

1 **(2) DECOMMISSIONING REVIEW.** A political subdivision may establish a decommissioning
2 review process to determine when a wind energy system has reached the end of its useful life.

3 **(3) FINANCIAL RESPONSIBILITY.** A developer, owner or operator of a large wind energy
4 system shall provide information to the political subdivision that demonstrates proof of the
5 owner's financial ability to comply with requirements regarding decommissioning in sub. (1).

6 **(4) SITE RESTORATION.** If a large wind energy system was constructed on land owned by a
7 person other than the owner or operator of the large wind energy system, the owner or operator
8 of the wind energy system shall ensure that the property is restored so that the topography, soils,
9 and vegetation are consistent with or similar to that of immediately adjacent properties at the
10 time of decommissioning. If a large wind energy system was constructed on a brownfield, as
11 defined in s. 560.13 (1) (a), Stats., the owner or operator shall restore the property to eliminate
12 effects caused by the large wind energy system.

13 **(5) DECOMMISSIONING COMPLETION.** (a) An owner shall file a notice of decommissioning
14 completion with the political subdivision when a wind energy system approved by the political
15 subdivision has been decommissioned and removed.

16 (b) Within 12 months of receiving a notice of decommissioning, a political subdivision shall
17 determine whether the wind energy system has satisfied the requirements of subs. (1)(a) and (4).

Subchapter III

Political Subdivision Procedure

22 **PSC 128.30 Application and notice requirements. (1) CONTENTS OF AN APPLICATION.**

23 If approval by a political subdivision is required for a proposed wind energy system or expansion

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1 of an existing wind energy system, a developer seeking the political subdivision's approval shall
2 complete and file with the political subdivision an application that includes all of the following:

3 (a) Wind energy system description and maps.

4 (b) Technical description of wind turbines and wind turbine sites.

5 (c) Construction process and timeline.

6 (d) Impact on local infrastructure.

7 (e) Information regarding noise.

8 (f) Information regarding shadow flicker.

9 (g) Effects on existing land uses within one-half mile of the wind energy system.

10 (h) Effects on air traffic.

11 (i) Effects on line-of-sight communications.

12 (j) A list of all state and federal permits required to construct and operate the wind energy
13 system.

14 (k) Except as provided in sub. (3), information required under s. PSC 128.40.

15 (m) Any other information necessary to understand the proposed wind energy system.

16 (n) Information related to the wind energy system requested by the political subdivision.

17 **(2) ACCURACY OF INFORMATION.** The developer shall ensure that information contained in
18 an application is accurate and internally consistent.

19 **(3) SMALL WIND ENERGY SYSTEM APPLICATIONS.** For a small wind energy system, a
20 developer is not required to file the information required under sub. (1)(k).

21 **(4) DUPLICATE COPIES.** A political subdivision may specify a reasonable number of copies to
22 be filed. Each copy shall include all worksheets, maps, and other attachments included in the
23 application. A political subdivision may permit a developer to file an application electronically.

1 **(5) NOTICE TO PROPERTY OWNERS.** (a) On the same day a developer files an application
2 for a large wind energy system, the developer shall mail or deliver written notice of the filing of
3 the application to property owners and residents located within one-half mile of proposed turbine
4 host properties or any wind energy system facility. The notification shall include all of the
5 following:

- 6 1. A complete description of the wind energy system, including the number and size of the wind
7 turbines.
- 8 2. A map showing the locations of all proposed wind energy system facilities.
- 9 3. The proposed timeline for construction and operation of the wind energy system.
- 10 4. Locations where the application is available for public review.
- 11 5. Developer contact information.

12 (b) After a political subdivision receives an application for a wind energy system, the notice
13 required to be published by the political subdivision under s. 66.0401 (4) (a) 1., Stats., shall
14 include the method and time period for the submission of public comments to the political
15 subdivision and the approximate schedule for review of the application by the political
16 subdivision.

17 **(6) PUBLIC PARTICIPATION.** (a) A political subdivision shall make an application for a wind
18 energy system available for public review at a local library and at the political subdivision's
19 business office or some other publicly-accessible location. A political subdivision may also
20 provide public access to the application electronically.

21 (b) A political subdivision shall establish a process for accepting and considering written public
22 comments on an application for a wind energy system.

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(c) Except as provided in this paragraph, a political subdivision shall hold at least one public meeting to obtain comments on and to inform the public about an application. A political subdivision is not required to hold a public comment meeting on an application to construct a small wind energy system that is to be located entirely on land owned by the developer.

(7) JOINT APPLICATION REVIEW PROCESS. (a) If the wind energy system is proposed to be located in the jurisdiction of more than one political subdivision, the political subdivisions involved may conduct a joint application review process on their own motion or upon request. If a developer requests a joint application review, the developer shall include the request in its notice of intent to file an application with the political subdivision under s. PSC 128.10(1). If the developer requests a joint application review process, the political subdivisions involved shall consider this request within 60 days of receipt of the developer's notice of intent to file an application.

(b) If political subdivisions elect to conduct a joint application review process, the process shall be consistent with this chapter and the political subdivisions shall establish the process within 90 days of the date the political subdivisions receive the developer's notice of intent to file an application. A political subdivision may follow the review process of another political subdivision for purposes of conducting a joint application review process concurrently with the other political subdivision. If a joint application review process is adopted, the developer shall file the application with all of the political subdivisions participating in the joint review process.

PSC 128.31 Application completeness. (1) INCOMPLETE APPLICATIONS. A political subdivision shall determine whether an application is complete applying the detailed application filing requirements established by the commission under PSC 128.40. The political subdivision

1 shall notify the developer in writing of the completeness determination no later than 45 days
2 after the day the application is filed. An application is considered filed the day the developer
3 notifies the political subdivision in writing that all the application materials have been filed. If a
4 political subdivision determines that the application is incomplete, the notice shall state the
5 reasons for the determination. A developer may file a supplement to an application that the
6 political subdivision has determined to be incomplete. There is no limit to the number of times
7 that the developer may re-file an application. For incomplete applications, the developer shall
8 provide additional information as specified in the notice. Subsequent 45-day completeness
9 review periods shall begin the day after the political subdivision receives responses to all items
10 identified in the notice. If a political subdivision does not make a completeness determination
11 within the applicable review period, the application is considered to be complete.

12 **(2) REQUESTS FOR ADDITIONAL INFORMATION.** A political subdivision may request
13 additional information after determining that an application is complete. A developer shall
14 provide additional information in response to all reasonable requests. A developer shall respond
15 to all inquiries made subsequent to a determination of completeness in a timely, complete, and
16 accurate manner.

17
18 **PSC 128.32 Political subdivision review of a wind energy system. (1) APPROVAL BY**
19 **POLITICAL SUBDIVISION.** (a) Except as provided in par. (b), a political subdivision may
20 require a developer to obtain approval from the political subdivision before constructing any of
21 the following:

- 22 1. A wind energy system.
- 23 2. An expansion of an existing or previously-approved wind energy system.

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(b) A political subdivision may not require a developer to obtain approval from the political subdivision under this chapter for any of the following:

1. A wind energy system placed in operation before the effective date of this chapter ... [LRB inserts date].

2. A wind energy system for which construction began before the effective date of this chapter ...[LRB inserts date].

3. A wind energy system approved by the political subdivision before the effective date of this chapter ... [LRB inserts date].

4. A wind energy system proposed by a developer in an application filed before the effective date of the chapter ... [LRB inserts date] with a political subdivision that has an established procedure for review of applications for wind energy systems.

(2) STANDARD FOR APPROVAL. A political subdivision may not unreasonably deny an application for a wind energy system or impose unreasonable conditions.

(3) WRITTEN DECISION. (a) A political subdivision shall issue a written decision to grant or deny an application for a wind energy system. The written decision shall include findings of fact supported by evidence in the record. If an application is denied, the decision shall specify the reason for the denial. An approval may be subject to the conditions in s. PSC 128.33(1).

(b) 1. A political subdivision shall provide its written decision to the developer and to the commission. If a political subdivision approves an application for a wind energy system, the political subdivision shall provide the developer with a duplicate original of the decision.

2. The developer shall file the duplicate original of a decision approving an application with the register of deeds for the county in which the wind energy system is located.

1 **(4) EFFECT OF OWNERSHIP CHANGE ON APPROVAL.** Approval by a political subdivision
2 of a wind energy system remains in effect if there is a change in the owner or operator of the
3 wind energy system. A political subdivision may require a developer, owner or operator to
4 provide timely notice of any change in the owner or operator of the wind energy system.

5 **(5) FEES.** (a) A political subdivision may charge a reasonable application fee or require a
6 developer to reimburse the political subdivision for reasonable expenses relating to the review of
7 an application for a wind energy system.

8 (b) A political subdivision's fee or reimbursement requirement shall be based on the actual cost
9 of the review of the wind energy system application, and may include the cost of services
10 necessary to review an application that are provided by outside engineers, attorneys, planners,
11 environmental specialists, and other consultants or experts. The political subdivision may set
12 standardized application fees based on the size and complexity of a proposed wind energy
13 system.

14 (c) A political subdivision may only charge a fee or require reimbursement if the political
15 subdivision gives written notice to developer of its intent to do so within 60 days of the date the
16 political subdivision receives a notice under s. PSC 128.10(1) and identifies an estimate of the
17 amount of the fee and the relevant reimbursement requirements.

18 (d) The total fee or reimbursement permitted under this subsection for a wind energy system may
19 not exceed 0.01 percent of the estimated cost of a small wind energy system; 0.03 percent of the
20 estimated cost of a large wind energy system with an installed nameplate capacity of 20
21 megawatts or less, and; 0.05 percent of the estimated cost of a large wind energy system with an
22 installed nameplate capacity of greater than 20 megawatts.

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(e) A political subdivision may require a developer to submit up to 50 percent of the total fee or total estimated reimbursement under this subsection at the time the application is submitted.

(f) A political subdivision may not charge a developer, owner or operator an annual fee or other recurring fees to operate or maintain a wind energy system.

PSC 128.33 Political subdivision provisions. (1) PERMITTED PROVISIONS. A political subdivision may include any of the following as a regulation or as a condition for approval of an application to construct a wind energy system:

(a) Require information describing how the developer has incorporated current DNR guidelines for potential impacts to natural resource features and any project-specific DNR recommendations regarding natural resources not subject to specific DNR permits.

(b) Require a developer, owner or operator of a large wind energy system to cooperate with any state-wide or regional study of the effects of wind energy systems on bat or migratory bird populations, including providing access to sites for post-construction bird and bat mortality studies.

(c) For a large wind energy system, may require a developer to include in a transportation plan the proposed type and period of use of local roads, a proposed process for mitigation of any damage to local roads related to construction and operation of the large wind energy system, and provision for a pre- and post-construction review by the political subdivision.

(d) For a large wind energy system, may require a developer to offer agreements that include annual monetary compensation to the owner of a nonparticipating residence if the residence is within one-half mile of a planned wind turbine site. If a political subdivision requires a developer to offer such an agreement, the amount of annual monetary compensation shall be

1 calculated by multiplying the number of installed wind turbines in the wind energy system
2 located within one-half mile of each nonparticipating residence by a per-wind turbine
3 compensatory amount, with annual payments escalating annually. The total annual payment to
4 any owner of a nonparticipating residence may not exceed the amount paid by the developer,
5 owner or operator to any owner of a turbine host property receiving payment under a wind lease
6 for one wind turbine. An agreement offered under this paragraph shall specify in writing
7 whether the landowner's acceptance of payment establishes the landowner's property as a
8 participating property.

9 (e) For a large wind energy system, may require a developer, owner or operator to provide the
10 political subdivision with a list of the tax parcel numbers of tracts of residential real property less
11 than 5 acres in size located within one mile of a wind turbine at the time the wind energy system
12 is constructed. The political subdivision may use this list to track the sale prices of residential
13 real properties of less than 5 acres in size within one mile of a wind turbine.

14 (f) Specify provisions regarding blasting to protect against groundwater contamination, including
15 notification requirements, timing limitations, plan requirements, and whether blasting may occur
16 within the political subdivision.

17 (g) May establish a procedure for assessing when wind energy system facilities are not
18 maintained in good repair and operating condition. The procedure may include timelines,
19 provide for payment of fees for conducting an assessment, and provide for notification to the
20 public.

21 (h) May require the developer, owner or operator of a large wind energy system to file an annual
22 report with the political subdivision documenting the operation and maintenance of the wind
23 energy system during the previous calendar year.

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(i) Establish reasonable requirements for the manner in which a developer, owner or operator of a large wind energy system may demonstrate proof of financial responsibility to ensure the availability of funds sufficient to keep the wind energy system in good repair and operating condition and to comply with decommissioning requirements.

(2) PROHIBITED PROVISIONS. A political subdivision may not include any of the following as a regulation or as a condition for approval of an application to construct a wind energy system:

(a) Require a developer, owner or operator to conduct a study of property value impacts.

(b) Except as provided in sub. (1)(d), require a developer, owner or operator to provide monetary compensation to landowners relating to property values.

(c) Impose a penalty on an owner or operator of a wind energy system if the owner or operator satisfies the requirements of this chapter regarding keeping the wind energy system in good operating condition and the requirements regarding decommissioning.

(d) Restrict wind turbine sites based on impacts to aerial spraying on participating properties.

(e) Establish structure lighting requirements for a wind energy system that conflict with standards established by the federal aviation administration.

128.34 Record of decision. (1) **RECORDKEEPING.** A political subdivision shall keep a complete written record of its decision-making related to an application for a wind energy system. If a political subdivision denies an application, the political subdivision shall keep the record for at least seven years following the year in which it issues the decision. If a political subdivision approves an application, the political subdivision shall keep the record for at least seven years after the year in which the wind energy system is decommissioned.

1 **(2) RECORD CONTENTS.** The record of a decision shall include all of the following:

2 (a) The approved application and all subsequent additions or amendments to the application.

3 (b) A representative copy of all notices issued under ss. PSC 128.10 (1) (a), 128.18 (5) (a) and
4 128.30 (5).

5 (c) A copy of any notice or correspondence that the political subdivision issues related to the
6 application.

7 (d) A record of any public hearing related to the application. The record may be an electronic
8 recording, a transcript prepared from an electronic recording, or a transcript prepared by a court
9 reporter or stenographer. The record shall include any documents or evidence submitted by
10 hearing participants.

11 (e) Copies of any correspondence or evidentiary material that the political subdivision considered
12 in relation to the application, including copies of all written public comments filed under s. PSC
13 128.30(6)(b).

14 (f) Minutes of any board or committee meetings held to consider or act on the application.

15 (g) A copy of the written decision under s. PSC 128.32(3)(a).

16 (h) Other materials that the political subdivision prepared to document its decision-making
17 process.

18 (i) A copy of any local ordinance cited in or applicable to the decision.

19 **(3) POST-CONSTRUCTION FILING REQUIREMENT.** Within 90 days of the date a wind

20 energy system commences operation, the developer, owner or operator shall file with the

21 political subdivision and the commission an as-built description of the wind energy system, an

22 accurate map of the wind energy system showing the location of each wind turbine, geographic

information system information showing the location of each wind turbine and current information regarding the developer, owner and operator of the wind energy system.

PSC 128.35 Modifications to an approved wind energy system. (1) MATERIAL CHANGE.

(a) A developer may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the political subdivision that authorized the wind energy system.

(b) A developer shall submit an application for a material change to an approved wind energy system to the political subdivision that authorized the wind energy system.

(2) REVIEW LIMITED. A political subdivision that receives an application for a material change to a wind energy system may not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.

PSC 128.36 Monitoring and mitigation. (1) MONITORING COMMITTEE. A political subdivision may establish a committee to monitor complaints and to monitor compliance by the developer, owner or operator with any conditions to an approved large wind energy system or to monitor compliance with any local agreements. If a monitoring committee is established, the political subdivision shall include on the monitoring committee a member who is a local employee of a developer, owner or operator of a wind energy system and at least one nonparticipating landowner residing within one mile of the large wind energy system.

(2) DUTIES. A monitoring committee may do all of the following:

(a) Maintain a record of all complaints brought to the monitoring committee.

(b) Require the developer, owner or operator to investigate, at the developer, owner or operator's expense, any complaint forwarded by the committee.

(c) Recommend a reasonable resolution to a complaint based upon the committee's findings.

(3) COMPLAINT RESOLUTION. A developer, owner or operator shall use reasonable efforts to resolve complaints. A developer, owner or operator shall make a good faith effort to resolve complaints within 45 days of receiving a complaint. A developer, owner or operator shall notify the political subdivision of complaints that have not been resolved within 45 days of the date the developer, owner or operator received the original complaint. A political subdivision shall establish a process for determining whether the developer, owner or operator has met the requirements of this chapter regarding complaint resolution.

Subchapter IV

Commission Procedure

PSC 128.40 Detailed application requirements. The commission shall establish detailed application filing requirements for applications filed for political subdivision review of a wind energy system, which shall contain a detailed description of the information required to satisfy the filing requirements for applications under s. PSC 128.30(1)(j). The commission may revise these requirements as necessary. The commission shall make the filing requirements available to the public on the commission's website.

PSC 128.41 Commission review. (1) APPEALS TO THE COMMISSION. An appeal under s. 66.0401 (5) (b), Stats., shall be treated as a petition to open a docket under s. PSC 2.07, except the time provisions of that section do not apply.

(2) PETITIONER FILING REQUIREMENTS. An aggrieved person under s. 66.0401 (5) (a), Stats., may file a petition with the commission. The petition shall be submitted to the commission in writing or filed using the commission's electronic filing system and shall contain all of the following:

(a) The petitioner's name, address, and telephone number.

(b) The name, address, and telephone number of the political subdivision that is the subject of the petition.

(c) A description of the wind energy system that is the subject of the petition.

(d) A description of the petitioner's relationship to the wind energy system.

(e) The information specified in s. PSC 2.07 (2).

(3) POLITICAL SUBDIVISION FILING REQUIREMENTS. (a) A political subdivision shall file a certified copy of the information under s. 66.0401 (5) (c) Stats., using the commission's electronic regulatory filing system.

(b) The commission may require the political subdivision to file up to 25 paper copies of the record upon which it based its decision.

(c) The commission may require the political subdivision to file additional information.

(4) SERVICE AND NOTICE. (a) A developer, owner or operator submitting a petition under sub. (2) (intro.) shall serve a copy of the petition on the political subdivision and on any other person specified in s. PSC 2.07 (3).

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(b) Any person other than a developer, owner or operator submitting a petition under sub. (2) (intro.) shall serve a copy of the petition on the developer, owner or operator, the political subdivision, and any other person specified in s. PSC 2.07 (3).

(c) A political subdivision that is subject to a petition under sub. (2) shall make a copy of the petition available for public inspection and, in the manner in which it is required to publish notice of a public meeting, publish notice of that petition.

(5) COMMISSION HEARING DESCRETIONARY. The commission may review a petition under this section with or without a hearing.

(6) ENVIRONMENTAL ANALYSIS. A docket opened to review a petition under this section is presumed to be a Type III action under s. PSC 4.10 (3).

(7) STANDARD OF REVIEW. The commission may reverse or modify a political subdivision's decision or enforcement action if the decision or enforcement action does not comply with this chapter or is otherwise unreasonable.

(8) REMAND TO POLITICAL SUBDIVISION. (a) Except as provided in par. (c), if the commission remands any issue to the political subdivision, the political subdivision's review on remand shall be completed no later than 90 days after the day on which the commission issues its decision.

(b) Under this paragraph, a political subdivision may extend the 90-day period if the political subdivision authorizes the extension in writing. Any combination of the following extensions may be granted, except that the total amount of time for all extensions granted may not exceed 90 days:

1. An extension of up to 45 days if the political subdivision needs additional information to determine issues on remand.

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2. An extension of up to 90 days if a developer makes a material modification to the application after remand.

3. An extension of up to 90 days for other good cause.

(c) If the commission remands a decision or enforcement action and directs the political subdivision to issue a decision consistent with the commission's decision, the political subdivision shall enter the decision within 20 business days.

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